State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 266-3585 • Fax: (608) 266-9935
E-Mail: ociinformation@wisconsin.gov
Web Address: oci.wi.gov

Testimony on Senate Bill 516
Sean Dilweg, Commissioner of Insurance
Before the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing
February 18, 2010

Thank you, Senator Taylor and members of the Committee on Insurance, for scheduling and conducting this hearing on this necessary piece of legislation.

Senate Bill 516 (SB 516) is a package of corrections and clarifications to the Wisconsin insurance statutes that are necessary to provide guidance for insurers and consumers. The bill also repeals statutes that are obsolete. SB 516 clarifies recent changes in auto insurance requirements. The bill also updates Wisconsin Insurance Security Fund (WISF) statutes, and reflects technical corrections to the Long-Term Care Partnership Program, and the American Recovery and Reinvestment Act health insurance subsidy program.

Specifically, the bill will repeal the Interstate Insurance Receivership Compact (Compact). This compact is dissolving and the statutes that created the compact are no longer necessary. The bill also repeals the definition of "impaired insurer" in Chapter 646, which is not used anywhere in Chapter 646.

The bill will change the Commissioner's authority to determine an insurer's participation or non-participation in HIRSP assessment. The change requires the Commissioner to conduct a public hearing before prior to excluding an insurer from the assessment.

SB 516 will establish reciprocity for qualified Long Term Care Partnership policies purchased outside of Wisconsin. Under the Partnership Program, participants with qualified long-term care insurance policies retain a portion of their assets for the purposes of Medicaid eligibility determination and are able to protect those assets from estate recovery. The reciprocity language will enable new Wisconsin residents who purchased their long-term care insurance policy while living in another state to participate in the Partnership Program.

SB 516 will make two changes to agent fees that are administered by OCI. Under current law, an insurance agent whose license is revoked for reasons such as failure to comply with continuing education requirements or paying renewal fees on time, may have the license reinstated if he or she satisfies the

original deficiencies and pays the an amount equal to the original license application fee for a total of $150 per line of authority. This bill requires that an agent seeking reinstatement of a license pay twice the amount of the license renewal fee for a total of $70 per line of authority This change reduces the amount that an agent will have to pay for reinstatement, which has proven to be burdensome for agents. SB 516 also implements an electronic application fee of $10 to be paid by new license applicants for filing an original electronic resident intermediary license application following completion of prelicensing requirements. The combination of these changes is expected to have a minimal impact on overall agency revenues.

SB 516 gives the Commissioner rulemaking authority to establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a terminated insured, or an eligible individual under any federal program that provides for a federal premium subsidy for individuals covered under continuation of coverage under a group policy. This change will give me permanent authority to enact federal changes in the American Recovery and Reinvestment Act as they relate to health insurance subsidies on the state level so that there is seamless coverage for all Wisconsin employees who wish to take advantage of the 65% premium subsidy. This subsidy has proved popular and the federal government has been inclined to make additional changes and extensions. With this change, the statutes anticipate future changes to the program. 2009 Wisconsin Act 11 created the initial authority for OCI to adopt rules to implement this program.

SB 516 makes technical clarifications to fraternal and mutual governance statutes by permitting a fraternal insurance organization to elect its directors by voting by electronic means or another method that is approved by the fraternal insurer's board of directors in its bylaws. The bill also clarifies that members of a merging town mutual and an assessable domestic mutual each have the right to vote on the plan of merger once the merger has been approved by the Commissioner.

SB 516 provides that enrollees under a policy issued under Part C or Part D of Medicare are not liable for health care costs that are covered under such a policy providing prepaid or fee-for-service health care or drug benefits. This change protects senior citizen insureds under Medicare Advantage and Medicare drug policies from being billed for charges covered under the policy.

SB 516 makes a number of technical changes to the Wisconsin Insurance Security Fund (Fund) statutes. The bill will exclude Fund coverage for Medicare Parts C (Medicare Advantage) and D (senior drug coverage) in the same manner as coverage under the managed care Medicare Advantage plans and plans developed between insurers, the Wisconsin Department of Health

and Family Services and the Centers for Medicare and Medicaid Services on the Medicaid side are excluded. Senior policyholders will not be held liable for any unpaid claims under this change.

The bill will give the Fund the ability to terminate its defense of a claim, if consistent with the policy terms, without the requirement to secure the insured's release. This is consistent with the NAIC Property and Casualty Insurance Guaranty Association Model Act. This provision would permit the WISF to be dismissed from an action and all liability to the insured once the WISF had paid or tendered for payment the policy limits in the same way that the insurer would have been dismissed under similar circumstances.

The bill creates a general exclusion for claims that arise out of business that cannot be assessed because of federal or state law. This also conforms with the NAIC model. The guaranty association system is based on the premise that all insurers who are members of the guaranty association in a particular state, i.e., those insurers whose policyholders will be protected by the guaranty association in the event of insurer insolvency, will be assessed to pay the claims of insolvent insurers. The simple premise is that if an insurer's policyholders are protected by the WISF, the insurer must pay assessments to the WISF for the claims of other insolvent insurers. This amendment provides that there is no coverage if there is a state or federal law that prohibits the WISF from assessing to pay the claims.

SB 516 will clarify that the $300,000 cap "on a single risk, loss or life" applies regardless of the number of policies or contracts. This is a clarification of the language and conforms to NAIC model guaranty association act language.

SB 516 increases the net worth threshold from $10,000,000 to $25,000,000 for both first-party claims and third-party claims. This creates a minimum $2.5 million exclusion (actual exclusion is calculated based on 10% of the insureds net worth) from fund coverage for claims filed by insureds with a net worth of $25 million or more. There is no exclusion for insureds with a net worth of less than $25 million.

The bill adds more detail to the claims appeal process and the assessment appeal process and place WISF processes into statute. This provision gives claimants a better roadmap to appealing a WISF claim decision because it puts the procedure in the statute. The bill also deletes the reference to Chapter 76 procedures for collection of assessments to accurately reflect the WISF procedures.

SB 516 makes a number of changes to auto insurance statutes to clarify the applicability of changes in the statutes passed earlier this session. Specifically the bill addresses the following concerns:

- Exempting primary and umbrella/excess policies that have only hired and non-owned exposure from the uninsured motor vehicle (UM), the uninsured motor vehicle (UIM) and medical payments coverage in s. 632.32(4) Wis. Stat. and the umbrella/excess UM and UIM offer requirements in s. 632.32(4r) Wis. Stat.

- Exempts umbrella and excess polices from the offer of medical pay coverage. The current provisions may be interpreted as requiring inclusion of medical pay coverage in umbrella and excess policies unless the coverage is rejected. The proposal would add a statement that such an offer and rejection is not required for umbrella and excess policies.

- Clarify that (a) that a motor vehicle which is self-insured under motor vehicle financial responsibility law does not fall within the definition of uninsured motor vehicle, and (b) that a motor vehicle that is owned by a governmental unit or agency does not fall within the definition of uninsured motor vehicle.

- S. 632.32(4r) Wis. Stat. uses the term "named insureds" in reference to who may reject coverage for UM/UIM in umbrella or excess liability policies. The language clarifies that if one named insured rejects coverage that named insured acts on behalf of all named insureds.

- Clarify that a trailer or semi-trailer does not need a separate policy and only a single policy with a single set of liability and UM/UIM limits on the motor vehicle is required. Those limits will extend to the trailer if the trailer is connected at the time that an insured event occurs.

These changes to the auto insurance statutes will provide a clearer direction to insurers and reduce confusion about the changes implemented last year.

I wish to thank Senator Taylor and Representative Cullen for introducing this legislation. I thank the Committee for the opportunity to have this hearing and I would be happy to address any questions that you have.

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Wisconsin.gov

Legal Unit
125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 267-9586 • Fax: (608) 264-6228
Web Address: oci.wi.gov

Date: February 12, 2010

To: Sean Dilweg
Commissioner

From: Jim Guidry
Legislative Liaison

Subject: Amendment to AB 701-SB 516

As a result of the hearing testimony on Assembly Bill 701 (AB 701) as well as input from others there are a number of items that should be addressed in the form of an amendment to the bill as well as its companion Senate Bill 516 (SB 516).

1. HIRSP

Under current law, the Commissioner has the authority to exempt insurers from paying their HIRSP assessment if the assessment is less than the cost to levy the assessment. The change to s. 149.13(1) in AB 701/SB 516 eliminated this automatic exemption authority and replaced it with a requirement for the commissioner to hold a public hearing if an insurer requests an assessment exemption.

It was not the intent to replace the automatic exemption for insurers with assessments below levy costs and therefore the section needs to be amended to restore this authority.

Suggested amendment language:

Insert after line 2 on page 6:

(1a) Notwithstanding subsection (1) the commissioner may by rule exempt as a class those insurers whose share as determined under sub. (2) would be so minimal as to not exceed the estimated cost of levying the assessment.

2. 611.24

An addition to AB 701/SB 516 would make a change to segregated accounts established by stock and mutual insurance corporations.

The amendment clarifies that an insurer established segregated account may be funded or supported by obligations issued by the general account or another segregated account. The amendment also allows the commissioner to determine the relative priority of payment of the obligation to the segregated account in the event of a receivership.

Suggested amendment language:

Insert after line 7 on page 8:

611.24 (3) (i) Expenses, loans and services. The general account of the corporation, or any segregated account, may for a fair consideration provide loans or guarantees in connection with, perform services for or reinsure other accounts, subject to rules promulgated by the commissioner. Generally accepted accounting principles and realistic actuarial tables may be considered to ascertain what is a fair consideration. Notwithstanding s. 645.68, the commissioner may approve assignment of a general or segregated account obligation to a segregated account to a priority in order of distribution higher than otherwise provided for under s. 645.68 (5).

This change will be effective upon publication.

3. Charitable Gift Annuities

The amendment will remove the sections in AB 701 that amended the investment restrictions to charitable gift annuities in Chapter 615. As you described in your testimony on AB 701, you determined that the changes to Ch. 615 by 2009 Wisconsin Act 33 were reasonable for charitable gift annuity issuers.

Suggested amendment language:

On page 10, delete lines 3-24.
On page 11, delete lines 1-3.

4. Definition of underinsured motorist.

The change would remove Section 25 from the AB 701 which added motor vehicles owned by a governmental unit in the definition of underinsured motorist in s. 632.32 (2) (e).

Suggested amendment language:

On page 12, delete lines 6-10.

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Testimony of Joseph Strohl
on behalf of the
Wisconsin Association for Justice
before the
Senate Judiciary, Corrections, Insurance,
Campaign Finance Reform and Housing Committee
Sen. Lena Taylor, Chair

2009 Senate Bill 516
February 18, 2010

My name is Joseph Strohl. I am the Legislative liaison for the Wisconsin Association for Justice (WAJ). While Senate Bill 516 covers a number of areas related to insurance, I am here to register WAJ's objection to one – the changed definition of underinsured and uninsured motorist vehicle, which excludes coverage if you are hit by a government-owned vehicle.

Prior to the passage of 2009 Act 28, there was no statutory definition of underinsured motorist vehicle or underinsured motorist insurance (UIM). However, the coverage has always been something consumers buy from their own insurance company to protect themselves and their family from accidents involving other drivers without adequate insurance.

Courts had identified "The purpose of underinsured motorist coverage is to compensate an insured accident victim when the insured's damages exceed the recovery from the at-fault driver (or other responsible party)." *Badger Mutual Insurance Co. v. Schmitz, et al.*

As adopted by 2009 Act 28, an underinsured motorist vehicle is broadly defined to meet this purpose –

> 632.32 (2)(e) "Underinsured motor vehicle" means a motor vehicle to which all of the following apply:

1. The motor vehicle is involved in an accident with a person who has underinsured motorist coverage.

2. A bodily injury liability insurance policy applies to the motor vehicle at the time of the accident.

3. The limits under the bodily injury liability insurance policy are less than the amount needed to fully compensate the insured for his or her damages.

The proposed change – to exclude government-owned vehicles from this definition – is not sound public policy. We believe policyholders should be able to get the benefit of the policy they purchase even if the vehicle is owned by the government. Why should it matter who owns the other vehicle?

By statute, government-owned vehicles have a cap of $250,000. In some cases that amount may not be enough to compensate someone who is hurt in an accident caused by a government vehicle.

At first blush some may think this provision is meant to save money for state and local governments, it is not. The change does nothing to alter the amount of money the government will pay out. What it does mean is that if someone is seriously injured by a government vehicle and has damages over $250,000, they will not have access to their own underinsured motorist coverage. If someone has purchased underinsured motorist coverage there is no good reason that person should not have access to their own policy that they paid for.

We do know of instances where insurance companies have attempted to define UM or UIM coverage by excluding coverage for a government-owned vehicle. Courts have held this violates public policy. (*Wravnovsky v. Travelers Ins., et al.)*

A representative sampling of decisions from other states that have invalidated the government-owned vehicle exclusion in various jurisdictions in the context of underinsured motorist coverage is as follows:

Minnesota: *Ronning v. Citizens Security Mutual Insurance Company*. In this decision, Minnesota law mandated compulsory underinsured motorist coverage. There was no exception for government owned vehicles in the statute. The court stated that a majority of states have ruled on this issue and found such exclusions to be unlawful restrictions on mandatory coverage required by statutes. The court concluded, "We agree with the reasoning behind these decisions, and hold that a government vehicle exclusion in an insurance policy is void as against public policy in the underinsured motorist context."

North Dakota: *Gabriel v. Minnesota Mutual Fire and Casualty*. The court stated, "[w]here statute does not provide for an exemption for governmental vehicles, a court will not rewrite uninsured or underinsured motorist coverage to provide for such an exemption."

Pennsylvania: *Kmonk-Sullivan v. State Farm Mutual Automobile Insurance Company*. In a jurisdiction similar to Wisconsin and involving a statute requiring insurance companies to offer underinsured motorist coverage, the court concluded that:

> Insurers' policy exclusion is contrary [to the statute] because it attempts to withdraw coverage that the legislature required it to offer. We, therefore, agree with the majority of State Appellate Courts that have considered this issue [citations omitted] and conclude that the insurance policy definitions of underinsured vehicle, which excludes government vehicles . . . 'is an unwarranted invasion of the broad coverage required by statute and is, therefore, void.

We believe the proposed change limits the broad definitions of uninsured and underinsured motor vehicles passed by the Legislature earlier this session. There is absolutely no good reason to change current law. In fact, we believe it would be bad policy to exclude this coverage for government-owned vehicles.

Thank you.